

I MINA'TRENTAI UNU NA LIHESLATURAN GUÁHAN
2011 (FIRST) Regular Session

Bill No. 137-31 (LS)

As substituted by Committee by Committee on Health & Human Services,
Economic Development, Senior Citizens, and Election Reform,
and amended on the Floor.

Introduced by:

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**AN ACT TO ESTABLISH ADMINISTRATIVE RULES
AND REGULATIONS OF THE DEPARTMENT OF
PUBLIC HEALTH AND SOCIAL SERVICES UNDER
ARTICLE 5 OF CHAPTER 4, DIVISION 1, TITLE 26,
GUAM ADMINISTRATIVE RULES AND
REGULATIONS, RELATIVE TO THE ISSUANCE OF
SANITARY PERMITS.**

BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. Legislative Findings and Intent. *I Liheslaturan Guahan* finds

that the proposed administrative rules and regulations pursuant to this Act for the

1 issuance of sanitary permits, as provided pursuant to §20105 of Chapter 20, and
2 §21102 of Chapter 21, Division 2, Part 1, Title 10, Guam Code Annotated, and as
3 further provided pursuant to §26A108 of Chapter 26A, Division 2, Title 10, Guam
4 Code Annotated, which authorizes the Director of the Department of Public Health
5 and Social Services to promulgate rules and regulations necessary to carry out the
6 provisions of the law governing the sanitary operations of health-regulated
7 establishments, is appropriate and necessary.

8 Further, *I Liheslaturan Guahan* takes due note that the Department of Public
9 Health & Social Services, in the development of the proposed guidelines addressed
10 herein, made a good faith effort to be inclusive of the affected stakeholders in the
11 industry.

12 It is the intent of *I Liheslaturan Guahan* to provide for the initial
13 establishment of the administrative rules and regulations for the issuance of
14 sanitary permits, as provided pursuant to §26A108 of Chapter 26A, Division 2,
15 Title 10, Guam Code Annotated, and applicable law.

16 Further, so as to ensure that the rules adopted pursuant to this Act remain
17 pertinent to and consistent with the needs of the community, it is the intent of *I*
18 *Liheslaturan Guahan* to provide an authorization and mandate for the Department
19 of Public Health & Social Services to regularly review the rules adopted pursuant
20 to this Act, and as appropriate promulgate amendments thereto pursuant to Article
21 3 of Chapter 9, Title 5, Guam Code Annotated (Rule-Making Procedures).

22 **Section 2.** The rules and regulations provided pursuant to Article 5 of
23 Chapter 4, Division 1, Title 26, Guam Administrative Rules and Regulations, are
24 hereby *repealed* in its entirety.

25 **Section 3. Adoption of Rules.** Notwithstanding any other provision of
26 law, rule, regulation and executive order, the rules and regulations of the
27 Department of Public Health & Social Services for the Issuance of Sanitary

Permits, and attached hereto as Exhibit “A”, to be codified under Article 5 of Chapter 4, Division 1, Title 26, Guam Administrative Rules and Regulations, is hereby adopted by *I Mina Trentai Unu Na Liheslaturan Guahan*.

Section 4. Amendment of Rules. The Department of Public Health & Social Services *shall*, at a minimum of every five (5) years, and pursuant to Article 3 of Chapter 9, Title 5, Guam Code Annotated (Rule-Making Procedures), review and amend the administrative rules and regulations adopted pursuant to Section 3 of this Act.

Section 5. Effective Date. The administrative rules and regulations adopted pursuant to Section 3 of this Act *shall* become effective upon enactment.

Exhibit "A"

Title 26 Guam Administrative Rules and Regulations

Chapter 4

"Article 5

RULES AND REGULATIONS GOVERNING THE ISSUANCE OF

SANITARY PERMITS

DIVISION OF ENVIRONMENTAL HEALTH

DEPARTMENT OF PUBLIC HEALTH AND SOCIAL SERVICES

Sanitary Permit Rules and Regulations

§4501. Purpose.

§4502. Authority.

§4503. Title.

§4504. Definitions.

§4505. Applications.

§4506. Fees.

§4506.1. Advance Notification of Fees Schedule.

§4507. Suspension or Revocation of Sanitary Permit.

§4508. Hearing.

§4509. Suspension Without Hearing.

§4510. Effective Date.

§4511. Severability.

§4501. Purpose. The purpose of these rules and regulations is to govern the issuance of sanitary permits and the assessment of necessary fees for the operation of health-regulated establishments.

§4502. Authority. §20105 of Chapter 20 and §21102 of Chapter 21 of Title 10, Guam Code Annotated, authorizes the Director of the Department of Public Health and Social Services to promulgate rules and

1 regulations necessary to carry out the provisions of the law governing the
2 sanitary operations of health-regulated establishments.

3 **§4503. Title.** These rules and regulations shall also be known
4 and cited as the *Sanitary Permit Rules and Regulations*.

5 **§4504. Definitions.** As used in these rules and regulations:

6 (a) *Chemical Toilet* shall mean a building or structure
7 housing one (1) or more water-tight containers of liquid chemical
8 disinfectants intended to receive and hold human excrement.

9 (b) *Cosmetic Establishment* shall mean any premise or
10 portion thereof, wherein any of the following is practiced for
11 compensation:

12 (1) shaving, clipping, trimming, or cutting human hair;

13 (2) singeing, shampooing, arranging, adorning,
14 dressing, curling, waving, permanent waving, tinting, applying
15 tonic to or dyeing human hair;

16 (3) giving facial, scalp, neck or body massages or
17 treatments with oils, creams, lotions, or other preparations
18 either by hand or mechanical appliances;

19 (4) applying cosmetic preparations, antiseptics,
20 powders, oils, clays, lotions, or other preparations to scalp, face,
21 neck, or hands; or

22 (5) manicuring or pedicuring.

23 (c) *Department* shall mean the Department of Public Health
24 and Social Services of the government of Guam;

25 (d) *Director* shall mean the Director of the Department of
26 Public Health and Social Services, or his designated representative;

1 (e) *Dry cleaning* shall mean any place, building, structure,
2 room, premises, or portions thereof, used in the business of dry
3 cleaning and dyeing of wearing apparel, household linens and other
4 articles, including coin-operated dry cleaning establishments;

5 (f) *Eating and Drinking Establishment* shall mean any food
6 service establishment, mobile food service establishment, or vending
7 machine;

8 (g) *Edible Garbage Feeding Establishment* shall mean swill
9 or leavings of food or any abandoned, spoiled, condemned meat, fish,
10 fowl, vegetable matter, or offal from slaughtered animals, liquid or
11 solid, which is free of toxic, or deleterious substances, and is deemed
12 by the Director as being suitable for use solely as animal feed;

13 (h) *Employee* shall mean any individual, including the owner,
14 operator, manager or other person performing any function in a
15 health-regulated establishment, whether for compensation or
16 otherwise;

17 (i) *Food Establishment* shall mean and includes every
18 establishment or place which is used or occupied as a bakery,
19 confectionary, cannery, dairy, creamery, packing house, grocery,
20 supermarket, meat or poultry market, fruit or vegetable market,
21 delicatessen, beverage plant, slaughterhouse, poultry processing plant,
22 fish processing plant, frozen food processing plant, ice plant, ice
23 cream or frozen dessert plant, public market, food warehouse, or for
24 the production, processing, manufacture, preparation for sale, canning,
25 bottling, packing, packaging, storage, sale, or distribution of any food;

26 (j) *Health-Regulated Establishment* shall mean any (1)
27 eating and drinking establishment; (2) food establishment; (3)

1 institutional facility; (4) hotel; (5) cosmetic establishment; (6) laundry
2 and dry cleaning establishment; (7) public swimming pool; (8)
3 mortuary; (9) edible garbage feeding establishment; (10) chemical
4 toilet; and (11) any other establishment required to possess a Sanitary
5 Permit issued by the Department;

6 (k) *Hotel* shall mean any structure or any portion of any
7 structure, including any lodging house, rooming house, dormitory
8 (including a dormitory housing for contract employees), health spa,
9 bachelor hotel, studio hotel, motel, private club, containing four (4) or
10 more guests, whether rent is paid in money, goods, labor, or otherwise,
11 or whether with or without meals. It does not include any penal
12 institution, hospital, clinic, nursing home, school, laboratory, or child
13 care facility;

14 (l) *Institutional Facility* shall mean any structure or any
15 portion of any structure operating as a child care facility, penal
16 institution, school, hospital, clinic, nursing home, or laboratory as
17 defined Title 10 GCA, Chapter 25;

18 (m) *Laundry and Dry Cleaning Establishment* shall mean any
19 place, building, structure, room establishment premises, or portions
20 thereof, used in the business of making, sorting, washing, drying,
21 starching, or ironing, or wearing apparel, household linens and other
22 articles, including any establishment providing laundering equipment
23 for use by customers for a fee, and known by various terms such as
24 laundromat, wash-o-mat, or launderette;

25 (n) *Mortuary* shall mean any place used for such activities as
26 are incident, convenient, or related to the preparation and

1 arrangements for the funeral, transportation, burial, cremation, or
2 other disposition of dead human bodies;

3 (o) *Public swimming pool* shall mean any artificial structure,
4 basin, chamber, or tank constructed of impervious material used or
5 intended to be used for swimming, diving, wading, or recreational
6 bathing (but *does not* include conventional bath-tubs where the
7 primary purpose is the cleaning of the body or individual therapeutic
8 tubs) and that is available for public use, whether for a fee or free of
9 charge; or any business, partnership, corporation or person for the use
10 of their customers, clients, guests or employees, including, but not
11 limited to, a commercial pool, a community pool or a pool at a hotel,
12 motel, resort, auto park, trailer park, apartment house, or other
13 multiple rental unit, private club, public club, public or private school,
14 gymnasium or health establishment;

15 (p) *Sanitary Permit* shall mean the official document issued
16 by the Department of Public Health and Social Services authorizing a
17 health-regulated establishment to operate its business; and

18 (q) *Temporary Food Service Establishment* shall mean any
19 eating and drinking establishment which operates at a fixed location
20 for a period of time *not exceeding* six (6) months in conjunction with
21 a carnival, fair, circus, exhibition, or other transitory gathering not of
22 a permanent structure.

23 (r) *Special Village Event* shall mean a carnival, fair, circus,
24 exhibition, or other transitory gathering sponsored by the village
25 Municipal Planning Council, *not to exceed* seven (7) consecutive days.

26 **§4505. Applications.** (a) All applications for sanitary permits
27 *shall* be in a form prescribed by the Director.

1 (b) A non-refundable deposit of Twenty Dollars (\$20.00) shall be
2 made to the "Treasurer of Guam" at the time the application for a Sanitary
3 Permit is submitted to the Department. Upon completion and processing of
4 the application, the deposit amount shall be deducted from the appropriate
5 fee listed in §4506.

6 (c) Any application that remains inactive for sixty (60) consecutive
7 days shall be considered permanently inactive, removed from the file for
8 processing, and then destroyed, and the non-refundable Twenty Dollars
9 (\$20.00) deposit shall be automatically forfeited.

10 (d) An applicant who wishes to re-apply after his or her application
11 has become permanently inactive under the provision of §4505(c) shall be
12 considered a new applicant and shall re-submit the application and
13 supporting documents and pay all required fees, including the Twenty
14 Dollars (\$20.00) non-refundable deposit fee.

15 (e) The expiration date of a Sanitary Permit issued for a temporary
16 food service establishment shall be the final date of the temporary event.

17 **§4506. Fees.** Fees for the issuance of a Sanitary Permit *shall* be
18 as follows:

19 (a) The Sanitary Permit Fee for the following health-
20 regulated establishments shall be Two Hundred Ninety Dollars
21 (\$290.00) if the establishment has 10 or more employees and Five
22 Dollars (\$5.00) for each additional employee above ten (10) thereafter;
23 for establishments with less than ten (10) employees, the fee shall be
24 One Hundred Fifty Dollars (\$150.00) until January 1, 2012; for
25 establishments with less than ten (10) employees, the fee shall be Two
26 Hundred Twenty Dollars (\$220.00) from January 2, 2012 until
27 January 2, 2014:

- (1) Eating and drinking establishments, excluding vending machines and temporary food service establishments;
- (2) Food establishments;
- (3) Institutional facilities;
- (4) Hotels;
- (5) Cosmetic establishments;
- (6) Laundry and dry cleaning establishments;
- (7) Public swimming pools;
- (8) Mortuaries;
- (9) Edible garbage feeding establishments;
- (10) Commercial animal establishments; and
- (11) Any other establishment required to obtain a Sanitary Permit from the Department not explicitly mentioned in these rules and regulations.

(b) The Sanitary Permit fee for temporary food service establishments shall be:

(1) One Hundred Dollars (\$100.00) for those operating for less than six (6) months, but more than three (3) days; and

(2) Fifty Dollars (\$50.00) for those operating for three (3) days or less.

(3) Twenty-five Dollars (\$25.00) for special village events officially sponsored by a village Municipal Planning Council, provided, however, that the vendor shall be limited to three (3) events per calendar year per permit issued.

(c) The Sanitary Permit fee for vending machines shall be:

1 (1) Two Hundred Ninety Dollars (\$290.00) per
2 vending machine for each of the first style or model of vending
3 machine; and

4 (2) Five Dollars (\$5.00) for each additional vending
5 machine.

6 (d) The Sanitary Permit fee for a chemical toilet operator
7 shall be Five Hundred Dollars (\$500.00) regardless of the number of
8 chemical toilets possessed by the operator.

9 (e) Issuance of a duplicate Sanitary Permit shall be Ten
10 Dollars (\$10.00).

11 (f) Amendments to an existing Sanitary Permit shall be Ten
12 Dollars (\$10.00).

13 (g) An applicant for a Sanitary Permit may request for the
14 permit to be expedited and processed on the same day the request is
15 submitted. The Department may grant such requests provided the
16 applicant has met all the requirements of the Department to obtain a
17 Sanitary Permit, including the requirement for the pre-operation
18 structural inspection. The Department shall assess a fee of Seventy-
19 Five Dollars (\$75.00) for expedited processing, in addition to the
20 regular processing fee. Applications for a Sanitary Permit for
21 temporary food service establishments which are submitted one (1)
22 day or less prior to the event will automatically be assessed an
23 expedited processing fee.

24 (h) The cost of the structural inspection, also known as a pre-
25 operation inspection, is included in the initial payment for the Sanitary
26 Permit. However, a fee of Fifty Dollars (\$50.00) an hour shall be
27 assessed for all subsequent inspections. With the exception of the first

1 hour, fractional hours shall be rounded up to the nearest whole hour if
2 more than one half (0.5) hour, and rounded down if less than one half
3 (0.5) hour.

4 (i) Requests for an expedited structural inspection may be
5 granted as determined by the Director if such inspection does not
6 cause the disruption of any pre-existing inspections scheduled for
7 other applicants. The fee for expedited structural inspections shall be
8 One Hundred Fifty Dollars (\$150.00), in addition to all other required
9 fees established in these rules and regulations.

10 (j) Any establishment whose Sanitary Permit is suspended
11 under the provisions of Title 10 GCA, Chapter 21, §21109, and who is
12 granted reinstatement by the Department as set out in Title 10 GCA,
13 Chapter 21, §21110, shall first pay a re-opening fee of One Hundred
14 Dollars (\$100.00) before the permit is returned or re-issued.

15 (k) The fee schedule established pursuant to this §4506 *shall*
16 become effective immediately upon enactment for new applications,
17 provided, however, it *shall* become effective for the renewal of all
18 Sanitary Permits issued prior to the enactment of these rules on June 1,
19 2012.

20 **§4506.1. Advance Notification of Fees Schedule.** The Director
21 shall ensure that advance, written notification is provided to all sanitary
22 permit licensees relative to the cost for permit renewal upon the expiration
23 of their current permit. The information *shall* be immediately provided as a
24 permit renewal notification.

25 **§4507. Suspension or Revocation of Sanitary Permit.** The
26 Director may suspend or revoke any Sanitary Permit under the provisions of
27 Title 10 GCA, Chapter 21, §21107(2)(d) or upon any violation by a health-

1 regulated establishment or by any of its employees for any environmental
2 health violation under Title 10 of the Guam Code Annotated, Chapters 20
3 through 40, or any rules and regulations promulgated concerning Sanitary
4 Permits.

5 **§4508. Hearing.** (a) Any health-regulated establishment whose
6 Sanitary Permit is to be suspended or revoked *shall* be notified by the
7 Director in writing of the Department's intention and the reasons therefore.

8 (b) Any health-regulated establishment that receives a notice of
9 violation with intent to suspend or revoke as described in Subsection (a) of
10 this §4508 and that wishes to contest *shall* request a hearing with the
11 Director in writing *no later than* fifteen (15) calendar days after receipt of
12 the notice, and *shall* state the grounds for objecting to the intended
13 suspension or revocation. The Administrative Adjudication Law's hearing
14 procedure applies.

15 (c) Upon completion of a hearing, the Director *shall* make a written
16 determination concerning the violation and whether a suspension or
17 revocation is to be imposed.

18 **§4509. Suspension Without Hearing.** (a) In accordance to
19 Title 10 GCA, Chapter 21, §§21107(d) and 21109(a) and (b), a Sanitary
20 Permit may be suspended without prior hearing:

21 (1) when the demerit score of the establishment is more than
22 forty (40);

23 (2) at the discretion of the Director for violating any
24 provisions of Title 10 GCA, Chapters 20 through 40; and

25 (3) for twice violating the same requirement deemed critical
26 under the applicable rules and regulations of the Department within

any six (6)-month period, in which case, it *shall not* exceed five (5) days.

(b) A suspension without prior hearing may remain in effect until the violation is corrected by the establishment, or resolved after a hearing in accordance with the Administrative Adjudication Law. The Director *shall* have the discretion to decide whether the suspension shall be continued pending a hearing.

§4510. Effective Date. These rules and regulations *shall* become effective immediately upon enactment.

§4511. Severability. *If* any provision or application of any provision of these rules and regulations are held invalid, such invalidity shall *not* affect the other provisions or applications of these rules and regulations.”